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MEMORANDUM

TO: Docket Control

2013 AUG -9 A 8:39

FROM: Steven M. Olea  
Director  
Utilities Division

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DATE: August 9, 2013

RE: IN THE MATTER OF THE APPLICATION OF TNCI OPERATING COMPANY LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE, LOCAL EXCHANGE AND FACILITIES-BASED LONG DISTANCE AND LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES. (DOCKET NO. T-20882A-13-0108)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Facilities-Based and Resold Local Exchange Services
- Facilities-Based and Resold Long Distance Services
- Switched Access Service
- Private Line Service

Staff is recommending approval of the application with conditions.

SMO:AFF:WMS:tdp\ML

Originator: Armando Fimbres and Wilfred Shand

Arizona Corporation Commission  
**DOCKETED**

AUG - 9 2013

DOCKETED BY	NR
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DOCKET NO. T-20882A-13-0108

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

TNCI OPERATING COMPANY LLC

DOCKET NO. T-20882A-13-0108

IN THE MATTER OF THE APPLICATION OF TNCI OPERATING COMPANY LLC FOR  
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
RESOLD LONG DISTANCE, LOCAL EXCHANGE AND FACILITIES-BASED LONG  
DISTANCE AND LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

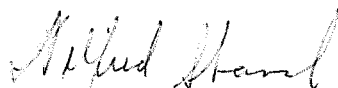
AUGUST 9, 2013

## TABLE OF CONTENTS

	<u>PAGE</u>
<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. REQUESTED SERVICES.....</b>	<b>1</b>
<b>3. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES.....</b>	<b>2</b>
<b>4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES .....</b>	<b>3</b>
<b>5. ESTABLISHING RATES AND CHARGES.....</b>	<b>4</b>
<b>6. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES .....</b>	<b>4</b>
6.1 <i>Number Portability .....</i>	<i>4</i>
6.2 <i>Provision Of Basic Telephone Service And Universal Service .....</i>	<i>5</i>
6.3 <i>Quality Of Service.....</i>	<i>5</i>
6.4 <i>Access To Alternative Local Exchange Service Providers.....</i>	<i>5</i>
6.5 <i>911 Service.....</i>	<i>5</i>
6.6 <i>Custom Local Area Signaling Services .....</i>	<i>6</i>
<b>7. REVIEW OF COMPLAINT INFORMATION.....</b>	<b>6</b>
<b>8. COMPETITIVE SERVICES ANALYSIS .....</b>	<b>6</b>
8.1 <i>Competitive Services Analysis For Local Exchange Services.....</i>	<i>6</i>
<b>9. RECOMMENDATIONS.....</b>	<b>8</b>
9.1 <i>Recommendations On The Application For A Cc&amp;N.....</i>	<i>8</i>
9.2 <i>Recommendation On The Applicant's Petition To Have Its Proposed Services Classified As Competitive .....</i>	<i>9</i>

## STAFF ACKNOWLEDGMENT

The Staff Report for TNCI Operating Company LLC (Docket No. T-20882A-13-0108) was the responsibility of the Staff member listed below. Wilfred Shand was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide Intrastate Telecommunications for a determination that its proposed services should be classified as competitive.

  
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Wilfred Shand  
Public Utility Analyst Manager

## 1. INTRODUCTION

On April 16, 2013, TNCI Operating Company LLC (“TNCI-OpCo” or “Company” or “Applicant”) filed an application for a Certificate of Convenience and Necessity (“CC&N”) to provide facilities-based local exchange services, resold local exchange services, facilities based long distance services, and resold long distance services on a statewide basis in the State of Arizona. The Applicant petitioned the Arizona Corporation Commission (“ACC” or “Commission”) for a determination that its proposed services should be classified as competitive.

On June 13, 2013, TNCI-OpCo responded to Staff’s First Set of Data Requests issued on May 17, 2013. On June 14, 2013, TNCI-OpCo amended its application to include a request for authority to provide Switched Access and Private Line Services.

Staff’s review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive, if the Applicant’s initial rates are just and reasonable and if approval of the Applicant’s CC&N should be conditioned.

## 2. REQUESTED SERVICES

TNCI-OpCo seeks to provide facilities-based and resold local exchange and long distance services to business customers throughout the State of Arizona.

TNCI-OpCo filed its application in connection with a transaction whereby TNCI-OpCo proposes to acquire certain of the assets, including customer accounts and contracts and telecommunications equipment, of Trans National Communications International Inc. (“TNCI-DIP”), through a sale pursuant to Section 363 of the United States Bankruptcy Code that was approved by the Bankruptcy Court on March 13, 2013.<sup>1</sup> TNCI-DIP is currently authorized to provide local exchange and interexchange service in Arizona pursuant to CC&Ns granted in Decision Nos. 64982 and 67672, on June 26, 2002 and March 9, 2005, respectively. Based on information provided for end of year 2012, TNCI-DIP does not qualify as a Class A investor-owned utility.

TNCI-OpCo states it intends to resell the services of CenturyLink, Sprint and Level3/Global Crossing. TNCI-OpCo proposes to continue the provision of services at the same rates and under the same terms and conditions as TNCI-DIP. TNCI-OpCo’s proposed tariffs will mirror the existing tariffs of TNCI-DIP except for the name and address of the company.

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<sup>1</sup> TNCI-OpCo and TNCI-DIP filed an application requesting approval for TNCI-OpCo to acquire the proposed assets on April 24, 2013 in Docket Nos. T-20882A-13-0114 and T-03975A-13-0114.

### **3. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

TNCI-OpCo, a Delaware limited liability company with headquarters offices located at 114 E. Haley Street, Suite A, Santa Barbara, CA 93101, is a wholly owned subsidiary of TNCI Holdings LLC ("TNCI Holdings").

TNCI-OpCo does not currently provide telecommunications services in any jurisdiction. However, TNCI-OpCo is authorized in Montana to provide telecommunications services and is in the process of obtaining authority to provide intrastate telecommunications services in all of the contiguous United States, Hawaii, and the District of Columbia. TNCI-OpCo intends to provide the same facilities-based and resold local exchange, exchange access and intrastate interexchange telecommunications services to business customers that TNCI-DIP currently provides to its customers. These services include (a) basic local exchange services and various ancillary services such as custom calling features, (b) long distance services, (c) dedicated Internet Protocol ("IP")-enabled, integrated voice and data services, and (d) private line, frame relay and other non-voice services. Applicant states it has not been denied authority to provide telecommunications services in any state, nor has any state revoked the authority of Applicant to operate.

As a member-managed limited liability company, TNCI-OpCo does not have directors but rather is managed by TNCI Holdings. TNCI Holdings' Board of Managers includes David Thompson, Jeffrey Fier, Jeff Compton and Howard Brand. A fifth manager may be designated in the future.

Jeff Compton is the President and Chief Executive Officer of TNCI-OpCo and a member of its parent company, TNCI Holdings. He is also the President and Chief Executive Officer of Blue Casa Telephone, LLC ("BCT"), a land-line telephone company dedicated to serving the Hispanic market. As President and CEO of TNCI-OpCo and BCT, Mr. Compton manages all aspects of their telecommunications operations, including planning, marketing, sales, and day-to-day management. Mr. Compton has worked in the telecommunications industry for 18 years, and for the past 2 years has served as CEO/President of BCT, a CLEC offering residential and business telecommunication services.

Howard Brand is a member of TNCI Holdings. Mr. Brand has been involved in the acquisition, management, repositioning and divestiture of many private companies. Mr. Brand is the President of HNB Capital LLC, a Los Angeles-based investment banking firm, specializing in acquisitions and-debt based corporate finance. Mr. Brand participated in the funding of BCT in March, 2011 and is currently a Director of the company. Mr. Brand has assisted BCT with its financial reporting and procedures.

Stefanie Edwards joined BCT in 2005. She is currently Vice President of Operations at BCT and will have similar responsibilities at TNCI-OpCo. Ms. Edwards is responsible for billing, finance and call center operations, risk management, regulatory and human resources. Her experience includes operations and processes reengineering, change management, quality

assurance controls & standards, systems development & enhancements, performance management and leadership development.

Peter Helms is currently Director of Carrier Relations at TNCI-DIP and will have similar responsibilities at TNCI-OpCo upon completion of the proposed transaction. In his current role, Mr. Helms is responsible for product lifecycle for both on-net and resold services, establishing and negotiating contracts with carriers and other vendors, and overseeing regulatory and corporate compliance with the Federal Communications Commission ("FCC"), Public Utility Commissions ("PUC"), State and local authorities. Mr. Helms began his telecommunication career in 1995 at Teleport Communications Group ("TCG"). During his tenure at TCG, Mr. Helms held roles in External Affairs (Public Affairs and Investor Relations), Marketing and Project Management. Six months after TCG was purchased by AT&T Corp., Mr. Helms began working for Network Plus in Product Management and Marketing where he lead the product definition process and developed and established all resold and facility based pricing and product offerings.

Joshua Ploude has been Chief Technology Officer of TNCI-DIP since 2008. He was responsible for planning and executing the deployment of a nationwide network for the company delivering business dialtone and dedicated internet access services. Mr. Ploude will have similar responsibilities at TNCI-OpCo. Mr. Ploude has been working in the telecommunications industry since 1999. In 2001 Ploude became the C.T.O. of PCS1, a California-wide facilities based CLEC. While at PCS1 Ploude was responsible for deploying legacy TDM and next-generation voice over IP network services across a 70 central office footprint in California. Ploude was also responsible for regulatory, provisioning, customer service and sales organizations during his time at PCS1. Following PCS1, Ploude founded and ran Ethos Communications Group, Inc. a consultancy focusing on technology and business development for communications service providers including competitive local exchange carriers ("CLECs"), Information Service Providers ("ISP") and triple-play service providers.

Staff believes that TNCI-OpCo possesses the management and technical capabilities necessary to provide the services it requests the authority to provide.

#### **4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

TNCI-OpCo was formed in conjunction with the sale of TNCI-DIP approved by the Bankruptcy Court on March 14, 2013. Therefore, TNCI-OpCo was unable to provide historical financials. TNCI-OpCo did, however, provide Staff with a pro forma Balance Sheet and Income Statement on June 18, 2013. The financials provided correspond with the assets that TNCI-OpCo proposed be transferred from TNCI-DIP if approved by the Commission in Docket Nos. T-20882A-13-0114 and T-03975A-13-0114.

The public pro forma financial statements provided directly to Staff state Total Assets of \$20,849,000, Shareholder Equity of \$11,311,000, and Net Income of \$17,908,000 in year 1.<sup>2</sup>

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<sup>2</sup> Attachment A contains the public pro forma Balance Sheet and Income Statement



## **5. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various CLECs and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. In section (B-4) of its application the Company states that its projected net book value at the end of the first twelve months of operation will be \$0 in Arizona jurisdictional assets. Additionally, TNCO-OpCo states in section (B-4), that projected revenues of \$279,690 are anticipated for the first twelve months of operations.

TNCI-OpCo intends to provide service under the terms and conditions of the existing TNCI-DIP tariffs –Interexchange Tariff No. 1, Local Exchange Tariff No. 2 and Access Tariff No. 3. These tariffs were approved in decisions authorizing the services for TNCI-DIP. At those Commission decisions, Staff reviewed these rates and found them comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

## **6. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of that Local Exchange service are discussed below.

### *6.1 Number Portability*

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

## *6.2 Provision Of Basic Telephone Service And Universal Service*

In review of TNCI-DIP's 2012 Utility Annual Report, Staff has confirmed that TNCI-DIP currently provides local exchange services. TNCI-OpCo has committed to continuing its provision of local exchange services.

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

## *6.3 Quality Of Service*

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

## *6.4 Access To Alternative Local Exchange Service Providers*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

## *6.5 911 Service*

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and FCC 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

### *6.6 Custom Local Area Signaling Services*

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

## **7. REVIEW OF COMPLAINT INFORMATION**

The Applicant states in Section A-18 of the application that it has not been denied authority to provide telecommunications services in any state, nor has any state revoked its authority to operate. The Applicant states in Section A-11 of its application that "neither applicant, nor any of its officers, directors, partners or managers are or have been involved in any formal or informal complaint proceedings before any federal or state regulatory commission, administrative agency or law enforcement agency since the inception of the company." Staff's Consumer Services section reports no complaint history within Arizona. Staff's review of the FCC website did not reveal any complaints.

The Applicant states in Section A-12 of its application that none of the Applicant's officers directors, partners or managers have been involved in any civil or criminal investigation or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

## **8. COMPETITIVE SERVICES ANALYSIS**

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

### *8.1 Competitive Services Analysis For Local Exchange Services*

#### **8.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

The statewide local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service in areas previously served only by ILECs. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, will have to compete with those existing companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and Voice over the

Internet Protocol ("VoIP") service providers. This may also be the case in areas served by independent ILECs.

**8.1.2 The number of alternative providers of the service.**

CenturyLink and various independent ILECs provide local exchange service in the State. CLECs and local exchange resellers are also providing local exchange service. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in portions of the independent ILECs' service territories.

**8.1.3 The estimated market share held by each alternative provider of the service.**

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink's Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

**8.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the Applicant, as defined in A.A.C. R14-2-801.**

None.

**8.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange service resellers, wireless carriers and VoIP service providers also offer substantially the same services.

**8.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in rural areas of the state.
- b. One in which new entrants will be dependent upon ILECs and other CLECs:
  1. To terminate traffic to customers.

2. To provide essential local exchange service elements until the entrant's own network has been built.
  3. For interconnection.
- c. One in which existing ILECs and CLECs have had an existing relationship with their customers that the Applicant will have to overcome if it wants to compete in the market and one in which the Applicant will not have a history in the Arizona local exchange service market.
- d. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

## 9. RECOMMENDATIONS

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

### *9.1 Recommendations On The Application For A Cc&N*

Staff recommends that Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. TNCI-OpCo's projected book value or fair value rate base at the end of its first 12 months of operation is projected to be \$0. Additionally, TNCI-OpCo provided a revenue projection of \$279,690.84 for the first twelve months of operation. Staff

has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;

7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first.
2. Notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).
4. TNCI-OpCo continue to provide services in accordance with Interexchange Tariff No. 1, Local Exchange Tariff No. 2 and Access Tariff No. 3 authorized for TNCI-DIP by the Commission and reaffirmed in this proceeding.

#### *9.2 Recommendation On The Applicant's Petition To Have Its Proposed Services Classified As Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market

power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.